IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 5784 of 2005

Between:

Smt. Oblisetty Mangatayaru, W/o Late Narasimha Rao,
R/o Dwraka Tirumala, West Godavari District.

..... PETITIONER

AND

1 The Principal Secretary to Govt, Government of Andhra Pradesh (Revenue), Secretariat, Hyderabad.
2 The Revenue Divisional Officer (LAO), Eluru, West Godavari District.
3 The Executive Officer, Sri Venkateswara Swamyvari Devasthanam Dwaraka Tirumala (V & m), W.G. District
R3 is impleaded as per court order dt. 22-8-2005 in WPMP 9858 of 2005

.....RESPONDENTS

WRIT PETITION NO: 4834 of 2005

Between:

Bondada Suryanaraya, S/o. Late Venkanna,
R/o. Dwarka Tirumala, West Godavari District.

..... PETITIONER

AND

1 The Principal Secretary to Government (Revenue) Government of Andhra

Pradesh, Secretariat, Hyderabad.
2 The Revenue Divisional Officer, (LAO) Eluru, West Godavari District.
3 The Executive Officer, Sri Venkateswara Swamyvari Devasthanam
Dwaraka Tirumala (V&M), W.G. District
R3 is impleaded as per court order dt. 22-8-2005 in WPMP 7674 of 2005

.....RESPONDENTS

WRIT PETITION NO : 5785 of 2005

Between:

Mandavalli Surya Prasad, s/o Narayana Murty,
r/o Dwaraka Tirumala, W.G.District.

..... PETITIONER

AND

1 The Principal Secretary to Government, Government of A.P.(Revenue), Secretariat, Hyderabad.
2 The Revenue Divisional Officer (LAO), Eluru, W.G.District.
3 The Executive Officer, Sri Venkateswara Swamyvari Devasthanam
Dwaraka Tirumala (V & M), W.G. District
R3 is impleaded as per court order dt. 22-8-2005 in WPMP 9859 of 2005

.....RESPONDENTS

WRIT PETITION NO : 5825 of 2005

Between:

1 Avanigadda Seetharama Rao, S/o Late Venkata Ratnam,
r/o Dwaraka Tirumala Village & Mandal, West Godavari District.
2 Avanigadda Chandravathi, W/o Late Venkata Satyanarayana,
R/o Dwaraka Tirumala Village & Mandal, West Godavari District.
3 Aavanigadda Bapanaiah, S/o Late Venkata Ratnam,
r/o Satyanarayanapuram, Vijayawada, Krishna District.

. .... PETITIONERS

AND

1 The Government of Andhra Pradesh, Rep. by its Principal Secretary (Revenue), Secretariat Buildings, Saifabad, Hyderabad.
2 The District Collector, West Godavari , Eluru.

3 The Revenue Divisional Officer (LAO), Eluru, West Godavari District.
4 The Executive Officer, Sri Venkateswara Swamyvari Devasthanam
Dwaraka Tirumala (V & M), W.G. Dist.
R4 is impleaded as per court order dt. 22-8-2005 in WPMP 10018 of 2005

.....RESPONDENTS

WRIT PETITION NO : 6564 of 2005

Between:

1 Ambati Pavan Kumar, S/o Ambati Gandhi,
being minor rep. by his Father & Guardian Ambati Gandhi, R/o Dwarakatirumala, W.G. District,
Extent 508 Sq. Meters, R.S.No. 324.
2 N. Lakshminarayana, S/o Venkateswara Rao,
R/o Rallakunta Village, Dwarakatirumala, W.G. District,
Extent 508 Sq. Meters, R.S.No. 324.
3 M. Narasimha Rao, S/o Venkataratnam,
R/o Dwarakatirumala, W.G. District,
Extent 508 Sq. Meters, R.S.No. 324.
4 Panamala Uma Maheswara Rao, S/o P. Subba Rao,
R/o Dwarakatirumala, W.G. District,
Extent 220 Sq. Meters, R.S.No. 324.
5 Panamala Naga Rajesh, S/o P. Subba Rao,
R/o Dwarakatirumala, W.G. District,
Extent 196 Sq. Meters, R.S.No. 324.
6 Panomala Mohan Babu S/o P. Subba Rao,
R/o Dwarakatirumala, W.G. District,
Extent 196 Sq. Meters, R.S.No. 324.

..... PETITIONERS

AND

1 The Principal Secretary to Government, Government of A.P. (Revenue),
Secretariat, Hyderabad.
2 The Revenue Divisional Officer (LAO), Eluru, W.G. District.
3 The Executive officer, Sri Venkateswara Swamyvari Devasthanam
Dwaraka Thirumala (V&M), W.G. District
R3 is impleaded as per court order dt. 22-8-2005 in WPMP 10261 of 2005

.....RESPONDENTS

WRIT PETITION NO : 8680 of 2005

Between:

Pamidipati Venkateswara Rao, s/o late Bhadrachalam,
native of Vijayawada, and presently risiding Block No.II, 2nd Floor, Kasturi

Apartments, No.6,
Dr.Radhakrishna Salai, Mylapore, Chennai.

..... PETITIONER

AND

1 Principal Secretary, Government of Andhra Pradesh (Revenue), Secretariat, Hyderabad.
2 The Revenue Divisional Officer (Land Acquisition), Eluru, W.G.District.
3 The Executive Officer, Sri Venkateswara Swamyvari Devasthanam, Dwaraka Tirumala (V & M), W.G. District
R3 is impleaded as per court order dt. 22-8-2005 in WPMP 15449 of 2005

.....RESPONDENTS

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WRIT PETITION NO : 15864 of 2005

Between:

Grandhi lakshmi Hymavathi, W/o.G.V.S.L.Kantha Rao,
R/O.Ramanama Shetram, 3rd Lane, Guntur district.

..... PETITIONER

AND

1 The Prl.Secretary to Government, Govt of A.P (Revenue) Dept, Secretariat, Hyderabad.
2 The Revenue Divisional Officer (LAO), Eluru, W.G.District.

.....RESPONDENTS

THE HONOURABLE SRI JUSTICEB.SESHASAYANA REDDY

W.P.No. 5784 OF 2005

AND

W.P.No. 4834 OF 2005

AND

W.P.No. 5785 OF 2005

AND

W.P.No. 5825 OF 2005

AND

W.P.No. 6564 OF 2005

AND

W.P.No. 8680 OF 2005

AND

W.P.No. 15864 OF 2005

COMMON ORDER:

1. Since the issue involved in these batch of writ petitions is one and the same, they are being disposed of by this common order.

2. These batch of writ petitions are filed by the land owners questioning the draft notifications under Section 4(1) of the Land Acquisition Act vide G.O.Ms.No.170, Rev.Endts., dated 2.2.2005 G.O.Ms.No. 233 Rev. (Endts 4) Department dated 23-2-2005 as well as dispensing with an enquiry under Section 5-A of the Land Acquisition Act.(for short 'the L.A.Act')

3. Draft notifications have been issued on 2.2.2005 and 23-2-2005 proposing the acquisition of lands specified in the schedule thereto situated at Dwaraka Tirumal village for a public purpose to wit for the development of Venkateswara Swamy Devasthanam, Dwaraka Tirumala and an urgency clause has also been invoked as provided under section Section 17(4) of the L.A.Act and thereby dispensing with enquiry under Section 5-A of the L.A.Act. It is the contention of the petitioners that the purpose for which the lands proposed to be acquired is vague and therefore, the notification issued under Section 4(1) of the L.A. Act as well dispensing with the enquiry under Section 5-A of the L.A.Act is not legal and proper and the same is required to be set aside. It is further averred in the writ affidavit (W.P.No.5784 of 2005) that proposals to acquire the land in S.No.45 have been initiated in the year 1984 and 1987 and on both the occasions proposals were dropped

4. Counter affidavits have been filed by the respondents. It is suffice to refer the counter affidavit filed in W.P.No.5784 of 2005. One Ch. Penchala Reddy, Revenue Divisional Officer and Land Acquisition Officer, Eluru, West Godavari District has sworn to the counter affidavit filed on behalf of respondents 1 and 2. It is stated in the counter-affidavit that Venkateswara Swamy Devasthanam, Dwaraka Tirumala situated at West Godavari is popularly known as Chinna Tirupati. Many amenities such as cottages to pilgrims, parking place to vehicles, construction of additional kalanamandapam and widening of roads are required to be provided. Therefore, the Executive Officer has sent a requisition for acquiring the land including the land of the writ petitioners. The land Acquisition Officer and Revenue Divisional Officer, Eluru, has submitted draft notification and draft declaration proposals in his letter ROC No. 1229/2004, dated 31-10-2004 to the Collector West Godavari District Iuru for an extent of Ac. 0-49 ½ cents in R.S.No. 45/3 of Dwaraka Tirumala village and mandal for the development of Lord Sri Venkateswara Swami Vari Devasthanam. In turn, the Collector, West Godavari District, Eluru, has forwarded the said proposals to the Secretary to Government, Endowments Department, Andhra Pradesh, Hyderabad, for approval. The Government of Andhra Pradesh has issued G.O.Ms.No.233 Revenue (Endowments.IV) Department, dated 23-2-2005 approving the draft notification under Section 4(1) of the L.A.Act in respect of R.S.No.45/3 to 45/11 Ac. 0-49 ½ cents of Dwaraka Tirumala village and

mandal. In view of the urgency, the Government has dispensed with enquiry under Section 5-A of the L.A.Act by invoking the provisions under Section 17(4) of the L.A.Act. A draft notification was published in A.P. Gazette Extraordinary No.18, dated 10-3-2005. The Government in the memo No. 30006/ Endt.IV dated 23-2-2005 have approved draft declaration under Section 6 of the L.A. Act for the above said land and the same was published in the A.P. Gazette Extraordinary No. 19, dated 16-3-2005. At that stage the petitioners filed writ petitions and obtained status quo order on 21-3-2005. The petitioners lands are situated in front of Kalyana Mandapam on the way leading to temple from bus stand and causing much inconvenience to pilgrims and also movement of vehicles. Urgency Clause has been invoked to avoid inconvenience in providing amenities to pilgrims. The structures on the lands of the petitioners are causing much inconvenience to pilgrims and movement of vehicles, more so, at the time of festival days and Utsavams. Unless the petitioners lands are acquired, it is highly difficult to maintain sanctity of the Devastanam. No mala fides have been attributed by the petitioners and therefore, the Land Acquisition proceedings initiated for acquisition of the land cannot be interdicted.

5. The third respondent who has come on record as per orders dated 22-8-2005 in W.P.M.P.No. 9858 of 2005, filed counter affidavit. The counter-affidavit of Respondent No.3 is almost on the same lines to that of the 1st and 2nd respondents. The only additional factor stated in the counter affidavit of third respondent is that the amount of Rs. 1,39,75,000/- has been deposited by the third respondent for the purpose of acquiring various extents of lands. The land in question in front of Kalyan mandapam is on the way leading to bus stand and causing much inconvenience to pilgrims and also movement of vehicles. It is suffice to refer para 6 of the counter-affidavit and it is thus:

> "*As per the requirement a requisition is made on behalf of the temple to the District Collector in Rc.No.F1/2792/2000, dated 20-10-2000, Rc.No.F1/2441/2001, dated 12-12-2001 and Rc.No.F1/2933/2003, dated 17-10-2003 for acquiring lands including the lands of writ petitioner. On such requisition the revenue authorities intimated the E.O. to deposit a sum of Rs.13,98,800/- or Rs. 14,00,000/- for acquiring the lands as required. Further the Commissioner, Endowments was pleased to permit the E.O. to deposit the*

said amount, accordingly this respondent had deposited Rs14,00,000/- initially, later a sum of Rs.35,00,000/- and Rs. 1,39,75,000/- as required by the land acquisition authorities for the purpose of acquiring lands Ac. 19-00, Ac. 103.82 and Ac. 0.49 ½ cents. The subject land in the present writ petition is part of land in Ac. 0.49 ½ cents in R.S.No.45/6 of Dwaraka Tirumala village, West Godavari District".

6. Heard the learned counsel for the petitioners and the learned Government Pleader for the respondents No.1 and 2 and the learned Standing Counsel appearing on behalf of the third respondent.

7. The learned counsel appearing for the petitioners submits that the purpose for which the lands are proposed to be acquired is very vague. Therefore, the notification issued under Section 4(1) of the L.A. Act is not legal and proper and the same is liable to be set aside. It is also submitted by him that the alleged purpose does not warrant dispensing enquiry under Section 5-A of the L.A. Act In support of his submissions reliance has been placed on the decisions of the Supreme Court in ***Munshi Singh Vs. Union of India*** and ***Union of India Vs. Krishan Lal Arneja*** and the decision of our high Court in ***Chatapalli Nadipi Subbarayudu Vs. District Collector, Kurnool***. In the first cited decision it has been held that if the enquiry under Section 5A of the L.A.Act has any purpose and if it has to be given its full effect, the person interested in the land proposed to be acquired must have an opportunity to submit his objections and that he can only if the notification under S. 4(1) while mentioning the public purpose gives some definite indication or particulars of the said purpose which would enable the persons concerned to object effectively if so desired. In the absence of such specific or particular purpose being stated the objector cannot file any proper or cogent objections under S. 5-A which he has a right to do under that provision. In the second cited decision it has been held by the Supreme Court that the authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 of the L.A. Act keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5 A of the L.A. Act could be completed. Para 17 of the

judgment need to be noted and it is thus;

> "*Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e., whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally, urgency to acquire a land for public purpose does not arise suddenly or overnight but some times such urgency may arise unexpectedly exceptionally or extraordinary depending on situations such as due to earthquake, floods, or some specific time bound project when the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive as aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While, applying the urgency clause, the State should indeed act with due care and responsibility invoking urgency clause cannot a substitute or support for the laxity, lethargic or lack of care on the part of the State Administration".*

In the third cited decision it has been held by our High Court that when possession of land was not taken within three months as mandated under Section 17(5) (a) (b) of the Act as amended by A.P. Act, 1983 and deposit of

80% of compensation amount before taking possession of land not made, dispensing with Section 5-A enquiry is unjustifiable. Para 13 of the judgment reads as follows:-

> "*In the light of the material placed before this Court and on careful scrutiny of the stand taken by Respondent No.2 in the counter-affidavit and also the contents of the notification issued under Section 4(1) of the Act, this Court is specified that the invocation of the urgency clause under Section 17(4) of the Act definitely cannot be sustained. Apart from this aspect of the matter it is no doubt brought to the notice of this Court that possession also was not taken within three months as specified by Section 17(5) (A) of the Act. Further, it was also brought to the notice of this Court that the deposit required to be made in case of invocation of urgency clause also had not been complied with. In the light of the reasons, which had been narrated in detail in the affidavit filed in support of the writ petition, this Court is of the considered opinion that dispensing with Section 5-A enquiry is totally unjustifiable. No doubt, the Counsel representing the respondents had placed reliance on the decision of the Division Bench in N. Ammorayya V. Dist. Social Welfare Officer, AIR 1979 AP 159, which is distinguishable on facts".*

8. The learned Government Pleader for Land Acquisition appearing for the respondents 1 and 2 submits that the purpose of acquisition of the lands is evident and there is no ambiguity. It is also submitted by him that the requirement of the lands for providing amenities to the pilgrims of the temple was eminent and therefore, invocation of urgency provisions under Section 17 of the L.A.Act was justified. Reliance has been placed on the decisions of our High Court in W.P.No.19838 of 2003 dated 24-9-2003in Venkata Swamy Mandai Vs. Govt. of A.P. rep. by its Special Chief Secretary, Endowments Department, Secretariat Hyderabad and others and W.P.No.20410 of 2003 dated 24.9.2003 in K.Ehirajulu Naidu and another Vs. Govt. of A.P. rep. by its Special Chief Secretary, Hyderabad and others and W.P. 20969 of 2003 dated 20-11-2003 M.Reddappa and two others Vs. Govt. of A.P. rep. by Special Chief Secretary, Endowments Department, Secretariat, Hyderabad and others.

9. Two notifications vide G.O.Ms.No.170, dated 2.2.2005 and G.O.Ms.No.233 dated 23.2.2005 are the subject matter in these writ petitions. The first notification is dated 16-2-2005 and the second notification is dated 23-2-2005. The total extent of the land covered in the 1st notification is 103.82 cents. Except the extent of lands involved in the writ petitions, an Award came to be passed in respect of other lands i.e. Ac. 68.42 cents. The particulars of the land owners and the extent of lands are detailed hereunder:-

Sl.No. Name of the Land Owner Sy.No.ExtentWhetherAward Whether

Passedornot Posession

Ac. Cents Handed

Over

1. B.Yesubabu 51/IA 1-14 Award passed handed over

2. R.K.Mohana Rao 51/IA 0-60 " "

3. P.G.R. Sharma 51/IA 0-60 " "

4. V. Nagfesh 51/IA 0-60 " "

5. KLN Raju 51/IA 0-60 " "

6. B.Venkateshwara Rao 5/1/C 3-55 " "

7. B.Suryanarayana 51/1C 2-60 Award not passed not handed

8. B.Krishna Rao 51/1C 3-64 Award passed handed over

9. M.Satyanarayana and Bros., 52/1C 0-50 " "

10. B.Venkateswara Rao 50/IB 0-30 " "

11. B.Krishna Rao 50/IB 0-31 " "

12. B.Yesubabu 50/IB 0-31 " "

13. B.Suryanarayana 50/IB 0-30 " "

14. B.Venkateshwara Rao 50/6B 0-03 Award not passed not handed

15. B.Krishna Rao 50/6B 0-02 Award passed handed over

16. B.Yesubabu 50/6B 0-02 " "

17. B.Suryanarayana 50/6B 0-03 Award not passednot handed

18. B.Krishna 50/5 1-28 Award passedhanded over

19. B.Chinnagandhi 50/5 1-28 " "

20. B.Haranath 50/5 1-30 " "

1. K.Bangaraju 297/3 0-65 “ “

2. K.Bangaraju 209/1 3-70 “ “

3. P.Surayanarayana Raju 310 22-35 “ “

4. K.Seshaiah and others 314/2 11-74 “ not handed over

5. P.Satyanarayana 315 8-28 “ “

6. Ch.Lakshmaiah 315 2-00 “ “

7. Ch. Nagesh 311 9-35 “ “

8, Ch. Nagesh 313/1 2-35 “ “

9. P.Venkateshwara Rao 313/2 20-70 not passed “

10. A.Bapanaiah and Others 324 22-70 “ “

ABSTRACT:

Total notified land Ac. 103-82 cents

covered under litigation Ac. 43-40 cents

9. The total extent covered second notification dated 23-2-2005 is 49 ½ cents. The extent of land covered under litigation is 10 ½ cents. The particulars of the landowners and extents are detailed below:

1. Y.Annavaram 45/3 0-03 not passed not handed over

2. N.Yenkayamma 45/4 0-02 “ “

3. K.Satyanarayana 45/5 0-02 ½ “ “

4. O.Mangatayaru 45/6 0-04 ½ “ “

5. M.S.Prasad 45/8 0-06 “ “

6. R.Dharmavathi 45/7 0-01 ½ “ “

7. G.V. Nadachari 45/9 0-10 " "

8. K.S.R. Acharyulu 45/9 0-10 " "

9. PVSSRJ Acharyulu 45/9 0-49 ½

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ABSTRACT:

Total Notified Land Ac. 0-49 ½ Cents

Covered under Litigation Ac. 0-10 ½ Cents

10. Except the lands covered under these writ petitions, Awards came to be passed in respect of other lands. The principal contention of the petitioners is that the purpose for which the lands are proposed to be acquired is very vague and therefore, the landowners are not able to file their objections effectively. This contention can be repelled by referring the above notifications. It is explicit from the notification that those lands are required for providing amenities to the pilgrims of Devastanam. A similar question came up for consideration in W.P.No.20410 of 2003, W.P.No.20969 of 2003. It has been held that providing amenities to pilgrims come within the ambit of public purpose. I deem it appropriate to refer the relevant portion in the order passed in the aforesaid writ petition.

> "*The acquisition of the lands in question is for public purpose for providing amenities for pilgrims of Sri Varasiddi Vinayakaswamy Temple in Kanipakam. The law is well-settled that the notification under Section 4 of the Act can be struck down by the Court only where the mandatory requirements of Section 4(1) have been violated and where any of the statutory conditions for acquisition has not been satisfied. In the instant case, there is no allegation of any mala fides nor the public purpose for which the land acquired is disputed. There is also no allegation of violation of any statutory requirements. The question whether it is a case of urgency is a subjective one. This Court is not competent to enquire into the sufficiency of the grounds for forming such opinion. The settled principle of law is that there is a presumption of regularity of official acts and mere denial that the Government had not formed an opinion as to the urgency or the allegation that the Government did not apply its mind to the question of urgency cannot be a ground warranting interference by this Court".*

11. It is settled proposition that providing amenities to pilgrims come within the ambit of public purpose. According to Section 4 of the L.A. Act, it is only necessary to state in the notification that the land is needed for the public purpose. Wording of Section 5-A would make it further clear that all that is necessary to be specified in a notification under Section 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection under Section 5(A) of L.A.Act. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition under S. 5-A. I think that the question whether the purpose specified in a notification under S. 4 is sufficient to enable an objection to be filed under S. 5-A would depend upon the facts and circumstances of each case. The purpose for which the lands are proposed to be acquired is mentioned in the notifications dated 16.2.2005 and 23.2.2005. The contention of the petitioners that the purpose notified under Section 4(1) notification is ambiguous has no merit.

12. Coming to the dispensing with the enquiry under Section 5-A of the Act, as on this day, possession of the lands has not been taken and sufficient time has been elapsed since 4(1) notification. In the circumstances, I deem it appropriate to direct the 2nd respondent to afford opportunity to the writ petitioners and hold enquiry under Section 5-A of the L.A. Act.

13. In the light of the reasons recorded supra, the 2nd respondent herein is directed to afford an opportunity to the writ petitioners and to hold enquiry under Section 5-A of the Act in accordance with the law. Writ petitions are accordingly disposed of with the above directions. In the facts and circumstances of the case, this Court makes no order as to costs.

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B.Seshasayana Reddy, J.

29th August,2005.

KM

THE HONOURABLE SRI JUSTICEB.SESHASAYANA REDDY

W.P.No. 5784 OF 2005

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W.P.No. 15864 OF 2005

COMMON ORDER:

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29th August, 2005.